promissory notes,[14] the modern conception of which rebuts any objection to the relevancy of these cases here based on the assumption that promissory notes are specialties requiring no consideration. The same result has been reached by a number of jurisdictions in cases of simple contract,[15] and at least one state has a statutory declaration to that effect.[16]

RECENT CASES.

ADMIRALTY — DECREES — CHANGE IN TITLE IN CONDEMNED PRIZE. — The plaintiff sued on a policy of marine insurance for loss of his ship by perils of the sea. The ship was captured during the Russo-Japanese war by a Japanese cruiser, but was wrecked on the Japanese coast before reaching port. Subsequently the wreck was condemned as a prize. *Held*, that the insured cannot recover. *Andersen* v. *Marten*, [1908] A. C. 334.

For a discussion of the case in the lower court, see 21 HARV. L. REV. 55.

BANKRUPTCY — DISCHARGE — EFFECT OF COMPOSITION AGREEMENT IN EXERCISING STATUTORY CONDITION. — By statute the stockholders of a corporation were made personally liable for its debts after judgment against the corporation and petition of execution unsatisfied. A corporation filed a petition in bankruptcy and all suits against it were restrained. The plaintiff secured an order permitting him to bring action, but before judgment a composition agreement was accepted by a majority of the creditors against the plaintiff's rights and was ratified by the court. The plaintiff thereupon discontinued his suit. He then sued the stockholders on their statutory liability. *Held*, that he cannot recover. *Firestone Fire Co.* v. *Agnew*, 40 N. Y. L. J. 639 (N. Y. App. Div., Nov. 1908).

The confirmation of a composition agreement by the proper court has the same effect as a discharge in bankruptcy. *In re Merriman*, Fed. Cas. 9, 479. The purpose of requiring a judgment here as a condition precedent is to make the creditor prove the debt and exhaust his remedy against the corporation. *United Glass Co.* v. *Vary*, 152 N. Y. 121. When performance of such a condition is rendered impossible by operation of law, it is excused. *Flash* v. *Conn.*, 109 U. S. 371. But it has been held that the court, in order to enable the plaintiff to go against the sureties on an attachment bond, may render judgment with a perpetual stay of execution, against a discharged bankrupt. *Hill* v. *Harding*, 130 U. S. 699. *Contra*, *Johnson* v. *Collins*, 117 Mass. 343. This analogous case then is authority for saying that though the corporation is relieved from paying the debt, a special judgment may be had against it for certain purposes. The right to this anomalous action against the bankrupt makes the present decision logical. But as a matter of practical expediency, it seems doubtful whether the court should compel the plaintiff to pursue this fruitless action before he can reach the stockholders.

BANKS AND BANKING — BANKER'S LIEN — EFFECT OF VOID PAYMENT OF NOTES. — An insolvent corporation deposited funds in the defendant bank which held its notes, some unmatured. By checks drawn on its deposit within four months of its bankruptcy, the corporation paid the notes as they matured. The checks were given intending a preference, and were therefore voidable

[14] Eaton *v.* Libbey, *supra;* Mize *v.* Barnes, 78 Ky. 506; Horn *v.* Fuller, 6 N. H. 511.

[15] Rector of St. Marks *v.* Tweed, 120 N. Y. 583; Bank *v.* Chalmers, 144 N. Y. 432; Williamson *v.* Yager, 91 Ky. 282; Cabot *v.* Haskins, *supra;* Van Eman *v.* Stanchfield, 10 Minn. 255.

[16] Ga. Civ. Code, § 3664. In Bell *v.* Sappington, 111 Ga. 391, specific performance was granted of such an agreement.